

# When your dog misbehaves

*What are your responsibilities and possible liabilities?*

by Gail H. Forsythe, LL.M.

**I** can't believe what I'm hearing. There are more lawyers in the court than I've seen before, and they're talking to the judge about 'Rufus' being euthanized! This is the third time I've been off work to appear before this judge. I thought that after setting a date and admitting Rufus bit the bicyclist when we were in the park, today would be easy. Just tell me how much I have to pay for allowing my dog off leash and I'll be on my way. This is more serious than I thought... Rufus's very existence is on the line!"

This scenario, as frightening and unlikely as it sounds, can and did occur. Dog ownership brings with it responsibilities and consequences. In this case, the owner was shocked to learn that a civil action was likely, in addition to the legal question of whether a beloved family dog should be euthanized. How do situations like this develop? What can dog owners do to protect themselves and their canine companions?

Imagine that you are jogging with your dog in a park where dogs are permitted. Your dog is energetic and full of life. You allow him off leash to burn off some steam. As you and your dog are jogging, a bicyclist suddenly appears and everyone collides. Your dog does not take kindly to you being on the ground, so he jumps into the mix and bites the bicyclist. As the dog's owner, what are your responsibilities and possible liabilities?

If a civil action is started by the bicyclist and a court holds you liable, you may be ordered to compensate the cyclist for pain and suffering, lost income (past and/or future), loss of opportunity, and expenses, interest and court costs. There are also significant costs, stress and anxiety associated with court actions.

## *Will you be liable?*

Let's look at some appeal-court cases for guidance. In the 1997 Shelvey v Bicknell case (British Columbia), a Rottweiler owned by the Bicknells ran up to Ms Shelvey while she was on a public beach. She fell onto the sand, hit her head and was knocked unconscious. The Bicknells were faced with a civil action; it went to the Supreme Court and then to the Court of Appeal. The Court of Appeal accepted the lower court's decision that Shelvey did not show, on the balance of probabilities, that the Rottweiler had a propensity to be dangerous. The court thought it would be unfair to assume that because it was a Rottweiler, the dog was likely to be dangerous. The court stated that the danger was small and a reasonable person would not have anticipated Shelvey's injury. Although a leash bylaw was breached, the Bicknells were not negligent, nor were they liable.

The next British Columbia case illustrates the high cost of a rather 'inno-

cent' greeting by a dog on an owner's property. Ms Janota-Bzowska was invited to the Lewis and Holtzman home. When she stepped from her car, the family Labrador Retriever leaped off the porch, ran toward her and knocked her onto her back. She fractured her finger and required three operations. She lost time off work, required a housekeeper and was permanently deformed. A question arose regarding the identity of the dog. Even so, the court held the owners liable and awarded \$30,000 for pain and suffering; \$3,000 for past and future wage loss; \$4,250 for loss of ability to perform household tasks; and \$2,402.52 for special damages and costs. In 1996, the appeal court dismissed the case because there was no evidence to suggest that the dog was a danger or likely to cause harm, nor was it known to misbehave by jumping on people.

Our third case, from the Alberta Court of Appeal, was decided in 1999. The Onofrychuks owned a Boxer/Labrador Retriever cross; they lived next door to Mr. Hare. The dog was friendly, playful and good with children. The Onofrychuks acquired a puppy and invited Hare to come into their yard to see the pup. As he bent over the puppy, the adult dog injured Hare's face. Despite a difference in the evidence as to why and how the Labrador injured Hare, the court awarded \$3,500 in damages plus \$300 in court costs.

These cases illustrate four elements the courts consider when deciding a case:

1) **Did the defendant(s) own the dog that caused the injuries?** Ownership means responsibility. All owners and co-owners can be named as "defendants." If the court accepts that it was your dog, even in name only, you may find yourself liable although you had no 'control' over the situation. Dog breeders tend to sell puppies on a co-ownership basis without considering this potential risk. To protect yourself, sell your puppies outright. If you absolutely must co-own, select your co-owner with extreme care.

2) **Were the defendant(s) liable under the doctrine of scienter?** Owners will be strictly liable if the doctrine or "legal rule" of scienter applies. The courts presume that a dog is not dangerous. But, if an owner knows that a dog is mischievous or vicious, the owner will have no defence and will be held accountable. If you know that your dog has these 'qualities,' protect yourself by taking extra precautions. Keep your dog securely confined so that it cannot harm.

3) **Were the defendant(s) liable in negligence?**

Owners must take care not to create a situation that has the potential for harm. The court will expect an owner to think ahead and consider, "Is it reasonably likely someone may be hurt if my dog is allowed to... (be off leash, jump up on someone or run into the street)?" If a reasonable bystander (who may not love your dog or any dog) would answer yes, there's a good chance the court will decide you were negligent. Take precautions; assess the situation from the reasonable – non-doggy – person's perspective.

4) **Does a provincial statute such as the Dog Owner's Liability Act or the Occupier's Liability Act apply?** Owners have an extra statutory duty to take reasonable care for the safety



### Who's liable if you and a cyclist collide and your dog defends you?

of visitors to their home or business. This duty arises under a provincial law or code, such as the Occupier's Liability Act.

Protect yourself and your visitor by anticipating and eliminating risks – canine or otherwise. If you live in Ontario and the Dog Owner's Liability Act applies, you may find yourself in criminal court facing a fine of up to \$5,000. The court may also destroy your dog!

We love our dogs and enjoy their antics. From a legal point of view, the key is to find a balance between fun and protecting others from harm. Snapping on a leash is clearly more economical

and safer for all concerned, especially for Rufus!

*This column is for educational purposes only and is not intended as legal advice. If you have a similar problem, consult a lawyer in your community without delay.*

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